



Senate

General Assembly

February Session, 2012

File No. 28

Senate Bill No. 63

Senate, March 19, 2012

The Committee on Public Safety and Security reported through SEN. HARTLEY of the 15th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE TIMING OF TESTS FOR BLOOD
ALCOHOL LEVELS IN OPERATING UNDER THE INFLUENCE CASES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 14-227a of the 2012 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective October 1, 2012*):

4 (b) Except as provided in subsection (c) of this section, in any
5 criminal prosecution for violation of subsection (a) of this section,
6 evidence respecting the amount of alcohol or drug in the defendant's
7 blood or urine at the time of the alleged offense, as shown by a
8 chemical analysis of the defendant's breath, blood or urine shall be
9 admissible and competent provided: (1) The defendant was afforded a
10 reasonable opportunity to telephone an attorney prior to the
11 performance of the test and consented to the taking of the test upon
12 which such analysis is made; (2) a true copy of the report of the test
13 result was mailed to or personally delivered to the defendant within
14 twenty-four hours or by the end of the next regular business day, after

15 such result was known, whichever is later; (3) the test was performed
16 by or at the direction of a police officer according to methods and with
17 equipment approved by the Department of Emergency Services and
18 Public Protection and was performed in accordance with the
19 regulations adopted under subsection (d) of this section; (4) the device
20 used for such test was checked for accuracy in accordance with the
21 regulations adopted under subsection (d) of this section; (5) an
22 additional chemical test of the same type was performed at least ten
23 minutes after the initial test was performed or, if requested by the
24 police officer for reasonable cause, an additional chemical test of a
25 different type was performed to detect the presence of a drug or drugs
26 other than or in addition to alcohol, provided the results of the initial
27 test shall not be inadmissible under this subsection if reasonable efforts
28 were made to have such additional test performed in accordance with
29 the conditions set forth in this subsection and such additional test was
30 not performed or was not performed within a reasonable time, or the
31 results of such additional test are not admissible for failure to meet a
32 condition set forth in this subsection; and (6) evidence is presented that
33 the test was commenced within two hours of operation or, if the test
34 was not commenced within two hours of operation, expert testimony
35 is presented to establish the reliability of the test. In any prosecution
36 under this section it shall be a rebuttable presumption that the results
37 of such chemical analysis establish the ratio of alcohol in the blood of
38 the defendant at the time of the alleged offense, except that if the
39 results of the additional test indicate that the ratio of alcohol in the
40 blood of such defendant is ten-hundredths of one per cent or less of
41 alcohol, by weight, and is higher than the results of the first test,
42 evidence shall be presented that demonstrates that the test results and
43 the analysis thereof accurately indicate the blood alcohol content at the
44 time of the alleged offense.

45 Sec. 2. Subsection (c) of section 14-227b of the general statutes is
46 repealed and the following is substituted in lieu thereof (*Effective*
47 *October 1, 2012*):

48 (c) If the person arrested refuses to submit to such test or analysis or

49 submits to such test or analysis [, commenced within two hours of the
50 time of operation,] and the results of such test or analysis indicate that
51 such person has an elevated blood alcohol content, the police officer,
52 acting on behalf of the Commissioner of Motor Vehicles, shall
53 immediately revoke and take possession of the motor vehicle
54 operator's license or, if such person is a nonresident, suspend the
55 nonresident operating privilege of such person, for a twenty-four-hour
56 period. The police officer shall prepare a report of the incident and
57 shall mail or otherwise transmit in accordance with this subsection the
58 report and a copy of the results of any chemical test or analysis to the
59 Department of Motor Vehicles within three business days. The report
60 shall contain such information as prescribed by the Commissioner of
61 Motor Vehicles and shall be subscribed and sworn to under penalty of
62 false statement as provided in section 53a-157b by the arresting officer.
63 If the person arrested refused to submit to such test or analysis, the
64 report shall be endorsed by a third person who witnessed such refusal.
65 The report shall set forth the grounds for the officer's belief that there
66 was probable cause to arrest such person for a violation of subsection
67 (a) of section 14-227a and shall state that such person had refused to
68 submit to such test or analysis when requested by such police officer to
69 do so or that such person submitted to such test or analysis [,
70 commenced within two hours of the time of operation,] and the results
71 of such test or analysis indicated that such person had an elevated
72 blood alcohol content. The Commissioner of Motor Vehicles may
73 accept a police report under this subsection that is prepared and
74 transmitted as an electronic record, including electronic signature or
75 signatures, subject to such security procedures as the commissioner
76 may specify and in accordance with the provisions of sections 1-266 to
77 1-286, inclusive. In any hearing conducted pursuant to the provisions
78 of subsection (g) of this section, it shall not be a ground for objection to
79 the admissibility of a police report that it is an electronic record
80 prepared by electronic means.

81 Sec. 3. Subsection (g) of section 14-227b of the general statutes is
82 repealed and the following is substituted in lieu thereof (*Effective*
83 *October 1, 2012*):

84 (g) If such person contacts the department to schedule a hearing, the
 85 department shall assign a date, time and place for the hearing, which
 86 date shall be prior to the effective date of the suspension, except that,
 87 with respect to a person whose operator's license or nonresident
 88 operating privilege is suspended in accordance with subdivision (2) of
 89 subsection (e) of this section, such hearing shall be scheduled not later
 90 than thirty days after such person contacts the department. At the
 91 request of such person or the hearing officer and upon a showing of
 92 good cause, the commissioner may grant one or more continuances.
 93 The hearing shall be limited to a determination of the following issues:
 94 (1) Did the police officer have probable cause to arrest the person for
 95 operating a motor vehicle while under the influence of intoxicating
 96 liquor or any drug or both; (2) was such person placed under arrest; (3)
 97 did such person refuse to submit to such test or analysis or did such
 98 person submit to such test or analysis [, commenced within two hours
 99 of the time of operation,] and the results of such test or analysis
 100 indicated that such person had an elevated blood alcohol content; and
 101 (4) was such person operating the motor vehicle. In the hearing, the
 102 results of the test or analysis shall be sufficient to indicate the ratio of
 103 alcohol in the blood of such person at the time of operation. [, provided
 104 such test was commenced within two hours of the time of operation.]
 105 The fees of any witness summoned to appear at the hearing shall be
 106 the same as provided by the general statutes for witnesses in criminal
 107 cases. Notwithstanding the provisions of subsection (a) of section 52-
 108 143, any subpoena summoning a police officer as a witness shall be
 109 served not less than seventy-two hours prior to the designated time of
 110 the hearing.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2012	14-227a(b)
Sec. 2	October 1, 2012	14-227b(c)
Sec. 3	October 1, 2012	14-227b(g)

PS

Joint Favorable

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

Eliminating the two hour time window for administration of a blood alcohol (BAC) test will not result in any fiscal impact. In cases where the BAC test is administered after the two hour time window, expert testimony will be required to establish the reliability of the test. The number of cases is projected to be fewer than five per year, and often the expert testimony will be provided by state employees, which does not generate costs for the Department of Criminal Justice.

The increase in number of administrative hearings will have no fiscal impact on the Department of Motor Vehicles due to the projection of fewer than five additional cases per year.

The Out Years

State Impact: None

Municipal Impact: None

OLR BILL ANALYSIS**SB 63****AN ACT CONCERNING THE TIMING OF TESTS FOR BLOOD ALCOHOL LEVELS IN OPERATING UNDER THE INFLUENCE CASES.****SUMMARY:**

Under current law, a blood alcohol (BAC) test or analysis must be administered to a driver within two hours of his or her operating a motor vehicle for the results to be admissible in a criminal prosecution for operating a motor vehicle while under (1) the influence of drugs or alcohol or (2) having an elevated BAC. This bill allows the admissibility of a test taken after the two-hour deadline if expert testimony establishes its reliability. The bill also makes a conforming change by eliminating the two-hour test deadline for purposes of administrative *per se* hearings, but it does not require expert testimony to establish the reliability of tests taken after the deadline for these hearings.

EFFECTIVE DATE: October 1, 2012

BACKGROUND***Implied Consent for Administrative Per Se Hearings***

CGS § 14-227b provides that a person who drives a vehicle has implicitly consented to submit to drug or alcohol testing. It establishes administrative license suspension procedures for drivers who refuse to submit to a test or whose test results indicate an elevated BAC.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable

Yea 21 Nay 0 (03/01/2012)